it is still held open.[15] The reason for refusing the pardon may be the fear of incurring possible disgrace.[16] But even though receiving the pardon throws upon the witness a double disgrace arising not only from the testimony he may give, but also from the acceptance of the pardon, a mere increase in the amount of shame can hardly operate to change the scope and character of the rule.

The force of the argument of the Supreme Court that, — "In this as in other conflicts between personal rights and the powers of government, technical, — even nice, — distinctions are proper to be regarded," [17] is greatly diminished when balanced against the contention of Judge Hand in the lower court that, — "Legal institutions are built on human needs and are not merely arenas for the exercise of scholastic ingenuity." [18] And, it is submitted, even the technical reasoning of the Supreme Court breaks down when considered in the light of the true basis for the privilege against self-incrimination.[19]

JURISDICTION OF EQUITY TO INTERFERE WITH INTERNAL MANAGEMENT OF FOREIGN CORPORATIONS. — The recent case of *Tolbert* v. *Modern Woodmen of America*, 145 Pac. 183 (Wash.),[1] brings up the much disputed question as to how far, if at all, a court of equity will interfere in the internal management of a foreign corporation. A foreign mutual life insurance company threatened to cancel the plaintiff's certificate of membership. In a suit against the corporation to enjoin such action, process was served on the local agent authorized to receive service. Relief was refused on the ground, often asserted,[2] that equity has no jurisdiction to entertain a suit requiring interference with the internal management of a foreign corporation.

Since a corporation exists only by the legislative fiat of the sovereign creating it, its existence must be limited to the territorial jurisdiction of that sovereign.[3] In other words, the foreign corporation is not and never has been actually present before the court in which suit is brought.[4]

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[15] So a writ of *habeas corpus* was refused a prisoner who had rejected an unconditional pardon, because it was his own voluntary act that kept him confined. *In re* Callicot, 8 Blatch. 89, 95.

[16] If in truth the acceptance is forced upon the witness, then, as has been submitted, no disgrace would ensue.

[17] Justice McKenna in the principal case, p. 94.

[18] United States *v.* Burdick, *supra*, p. 494.

[19] "When, however, the question is of privilege, the witness only needs protection and he is protected when the means of safety lies at hand." Judge Hand in United States *v.* Burdick, *supra*, p. 494.

[1] For a statement of the case, see p. 634 of this issue of the REVIEW.

[2] See Wilkins *v.* Thorne, 60 Md. 253; North State Gold & Copper Mining Co. *v.* Field, 64 Md. 151, 20 Atl. 1039; Kansas, etc. Construction Co. *v.* Topeka, S. & W. R. Co., 135 Mass. 34; BEALE, FOREIGN CORPORATIONS, § 300. The mere fact that the management of a foreign corporation is involved seems to be taken as conclusive against the jurisdiction of the court. See Taylor *v.* Mutual Reserve Fund Life Ass'n, 97 Va. 60, 33 S. E. 385.

[3] See Bank of Augusta *v.* Earle, 13 Pet. (U. S.) 519, 588; Paul *v.* Virginia, 8 Wall. (U. S.) 168, 181; R. Co. *v.* Koontz, 104 U. S. 5.

[4] See Smith *v.* Mutual Life Insurance Co., 14 Allen (Mass.) 36; Matter of Rappleye, 43 N. Y. App. Div. 84, 59 N. Y. Supp. 338.

To-day, however, practically every state has a statutory requirement that foreign corporations, before doing business in the state, shall signify their consent to be sued in the courts of the state, by appointing an agent to accept service of process.[5] When consent to service is thus given, the actual presence of a corporation is no more necessary to give the court jurisdiction than that of a natural person who had consented in advance and was out of the state at the time of the suit.[6] If, then, the court has before it a case where the defendant has been duly served with process, and the facts are such that equity would act if the defendant were a domestic corporation, it is submitted that the only question for determining jurisdiction should be whether the court has power to render an effective decree.[7] If the corporation has property within the jurisdiction, sequestration should be a proper method of enforcing the decree; and, as a practical matter, very effective pressure may be brought to bear on the corporation by a threat to exclude it from the state unless it obeys the decree of the court.[8]

If then the court has jurisdiction, a further and equally important question arises whether the court in its judicial discretion should exercise this jurisdiction. The corporation, it is true, is the creature of the sovereign by whose will it exists. Its capacity and powers, the rights and obligations of its shareholders, and its general management are regulated by the laws of that sovereign.[9] But since the courts every day interpret and enforce rights acquired under foreign law, the necessity of doing so in this case should in no wise deter the court. There is, of course, the graver difficulty of compelling acts outside the jurisdiction.[10] But this objection is neither more nor less serious in the case of foreign corporations than in other cases. And it does not apply where the acts are to be done within the jurisdiction, or where it is an injunction against doing acts as in the principal case. The feeling that such matters can best be handled by the state of the domicile presents the most formidable barrier in the way of equity exercising its jurisdiction, but sole control by that state does not always lead to satisfactory results under modern conditions.[11] Many corporations created in one state transact business in almost every state of the Union; and very often a corporation is created in one state to do business wholly within another. In the former of these cases, it would obviously be unjust to have the

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[5] For a collection of these statutes, see BEALE, FOREIGN CORPORATIONS, ch. vii.

[6] Montgomery, Jones & Co. *v.* Liebenthal & Co., [1898] 1 Q. B. 487.

[7] For this test of jurisdiction, see DICEY, CONFLICT OF LAWS, 40. For cases allowing decrees against foreign corporations when there were practical means of enforcement, see Harding *v.* American Glucose Co., 182 Ill. 551; Richardson *v.* Clinton Wall Trunk Co., 181 Mass. 580, 64 N. E. 400; Ernst *v.* Rutherford & Boiling Spring Gas Co., 38 N. Y. App. Div. 388, 56 N. Y. Supp. 403; Prouty *v.* Michigan, S. & N. Ind. R. Co., 1 Hun (N. Y.), 655.

[8] KANSAS GENERAL STATUTES, 1905, § 3591 (providing for exclusion of corporations unless they obey the decrees of the courts).

[9] BEALE, FOREIGN CORPORATIONS, §§ 301, 304, 305.

[10] For cases ordering affirmative acts abroad, see The Salton Sea Cases, 172 Fed. 792; Miller *v.* Rickey, 127 Fed. 573, 218 U. S. 258; Willey *v.* Decker, 11 Wyo. 476, 73 Pac. 210. But see 17 HARV. L. REV. 572; 23 *id.* 390; 26 *id.* 294.

[11] The popular desire to increase the control of the state courts over foreign corporations is shown by legislative attempts to keep them out of the federal courts. See 28 HARV. L. REV. 304.

courts of several different states rendering inconsistent decrees against the corporation especially as all interested parties could not conveniently be joined. Accordingly, matters of actual internal management, such as election of officers, issue of stock, declaration of dividends and distribution of assets might well be left to the courts of the domicile. But, on the other hand, where a corporation has all its property and transacts all its business in the state where suit is brought, the fact that it has been incorporated in another state should not deprive the court of all the powers over it which the court has over domestic corporations. Therefore, it is submitted that the foreign character of a defendant corporation should not be conclusive against the jurisdiction of the court, if an effective decree is possible, but should be merely one of the facts to be considered in determining whether the court can do substantial justice to all concerned.

In the principal case it does not appear whether or not the local court had means of pressure such as to render a decree effective. But even if this were the case, equitable relief was properly refused. The defendant corporation was doing business in a number of states, while the plaintiff was not merely seeking to adjust an insurance claim between himself and the company, but was asserting membership as a shareholder. The rights of all parties could best be determined at the corporate domicile.

IMPLIED AUTHORITY OF THE PRESIDENT TO WITHDRAW PUBLIC LANDS FROM ENTRY. — The recent majority decision of the United States Supreme Court upholding the power of the President to withdraw from entry oil lands which Congress had opened to settlement [1] gives legal sanction to the employment of ordinary business methods in the machinery of government, without disturbing the delicate adjustment of power between Congress and the President. *United States* v. *Midwest Oil Co.*, Sup. Ct. Off., No. 278 (Feb. 23, 1915). The defendants made entry on the lands withdrawn, after the issuance of the President's order.[2] While recognizing to the fullest extent that the power over the public domain is lodged primarily with Congress,[3] the court works out an implied authorization of Executive withdrawals from long-continued acquiescence by Congress. The result is sustained on principles of agency, as applied in other situations,[4] and is in no way dependent on any theory that the President has acquired the power by adverse possession.

The government seems to have urged, though apparently not very seriously, that the President, as commander-in-chief of the army and navy, could hold these petroleum lands, as a valuable source of fuel supply, pending action by Congress. As the decision is placed on other grounds, this claim is not denied by the Court, but it seems wholly untenable. Securing an adequate fuel supply, from whatever source, falls

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[1] ACT OF FEB. 11, 1897, 29 STAT. 526, R. S. 2319, 2320.
[2] Temporary Petroleum Withdrawal, No. 5, issued Sept. 27, 1909.
[3] CONSTITUTION OF THE UNITED STATES, Art. IV, § 3.
[4] Wheeler *v.* Benton, 67 Minn. 293; Tennessee River Trans. Co. *v.* Kavanaugh Bros., 101 Ala. 1.